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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
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3 UNITED STATES OF AMERICA,

4 v.

13 CR 811 (ALC)

5 MARTIN AVALO, ALVARADO  
6 DOMINGUEZ, EDWIN ARAUJO,  
7 GUILLERMO ARAUJO, MIGUEL  
8 ARAUJO and BRYAN ALTAGRACIA,

Defendants.

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9  
10 New York, N.Y.  
May 28, 2014  
11 10:30 a.m.

Before:

12 HON. ANDREW L. CARTER,

13 District Judge

14 APPEARANCES

15 PREET BHARARA  
16 United States Attorney for the  
Southern District of New York  
17 JASON A. MASIMORE  
Assistant United States Attorney

18 DAVID S. GREENFIELD, ESQ.  
19 Attorney for Defendant M. Avalo

IRA LONDON, ESQ.  
20 Attorney for Defendant A. Dominguez

21 WILLIAM STAMPUR, ESQ.  
22 Attorney for Defendants E. Araujo, M. Araujo, B.  
Altagracia

23 JAMIE BAGLIEBTER, ESQ.  
24 Attorney for Defendant G. Araujo  
Also present: Emma Greenwood, Discovery Coordinator

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(In open court; case called)

THE DEPUTY CLERK: Counsel, please state your appearance for the record.

MR. MASIMORE: Jason Masimore for the government.

THE DEPUTY CLERK: For the defendants.

MR. STAMPUR: Good morning, Judge. William J. Stampur for Edwin Araujo, who just raised his hand. He is in the jury box.

I am also standing in, your Honor, for two codefendants who actually out on bail. Miguel Araujo just raised his right hand and Bryan Altagracia. Mr. Epstein represents Miguel Araujo, and Mr. Altagracia's lawyer Mr. Watters is in the middle of a homicide trial Bronx County.

MS. BAGLIEBTER: Good morning, your Honor. Jamie Bagliebter representing Guillermo Araujo, second closest to the bench.

MS. GREENWOOD: Good morning, your Honor. Emma Greenwood coordinator discovery attorney.

MR. LONDON: Good morning, your Honor. Ira London for Alvarado Dominguez, who is in the jury box on the far right.

MR. GREENFIELD: Good morning, your Honor. David Greenfield representing Martin Avalo, who is raising his hand.

THE COURT: Good morning everyone. Let's check in and get an update on the status of discovery in this case.

Where are we?

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1 MR. MASIMORE: Yes, your Honor. Since the  
2 government's last letter we have been pulling together  
3 additional materials. For example, we have been receiving  
4 certified -- may be sit down to be closer to the mic?

5 THE COURT: Certainly.

6 MR. MASIMORE: We received certified DNA files from  
7 the Office of the Medical Examiner. We have gone through now  
8 and redacted the portions of those that need to be redacted as  
9 we get them on a rolling basis. I now have a few thousand  
10 pages that I just Bates stamped last night that I will be able  
11 to include in the next production.

12 Additionally, we have other materials. For example,  
13 Edwin Araujo at his apartment had a DVR system, a digital video  
14 recorder surveillance system of his own. That was seized and  
15 searched pursuant to the search warrant at the time of the  
16 takedown. That contains a lot of footage that needs to be  
17 produced and we have a hard drive with some of that material on  
18 it. We'll certainly make available the full recording. That  
19 type of evidence has video evidence of certain of the  
20 defendants inside that apartment and then leaving during  
21 burglaries and then coming back and wearing similar clothing to  
22 people who were on the video surveillance at the various  
23 burglaries.

24 We also have historical cell site information that has  
25 been coming in as we made applications. I have a stack, I

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1 would say, a quarter inch to a half inch thick of some of the  
2 newer applications to turn over to defense counsel. It is of  
3 the same nature of other applications that have been made in  
4 the case. It not of a different type.

5 We also have various insurance documents, some  
6 additional surveillance video on different dates and we have  
7 telephone subpoena returns.

8 There is a fairly large volume of materials that we  
9 have been continuing to collect, but it is not the same degree  
10 as what has already been produced. We have discussed with  
11 defense counsel about whether to produce things on a strict  
12 rolling basis. That is, when it comes to my desk get it out or  
13 whether we should keep it and manage it into groups so it is  
14 easier to manage. As I understand, keeping it and producing it  
15 in a bigger bulk group is what the defense would like because  
16 it makes it easier to keep track of it and to review it and to  
17 make it available to their clients.

18 The telephone subpoena returns, they come to us  
19 produced in various formats from the phone companies and I  
20 inquired with the defense as to whether they would just like  
21 that mega data so they can get it quicker or whether they would  
22 rather have us send it out to a vendor to have it Bates stamped  
23 so they could keep track of it. It doesn't take a long time,  
24 but takes longer than my copying the lists and sending them  
25 over. They indicated they prefer to receive the Bates version.

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1           We also have a large, I would say not larger than the  
2       typical case, volume of recorded prison calls made while the  
3       defendants have been in as well as their e-mails. One thing I  
4       did want to ask the Court about, my inclination had been to  
5       make individual productions to each of the defendants rather  
6       than making available all of each other's calls to each other.  
7       I envision a scenario where as we continue to review those  
8       calls and get closer to any trial, where some comment that is  
9       made during a call may be relevant to the case and we may want  
10      to put it in. What I would propose to your Honor for your  
11      Honor's consideration is whether as we get closer and we start  
12      identifying calls that may be relevant that we include that in  
13      sort of a rolling discovery as we get closer, rather than  
14      having a blanket production, which I think given certain  
15      tensions in the case it is probably not a great idea to have  
16      everybody listening to each other's calls in this particular  
17      case.

18           Also, I had mentioned in the letter, my last letter to  
19      the Court and to the defendants, that we had additional GPS  
20      tracking data. That is all collected now. What I propose is  
21      putting this all together in coordination with Ms. Greenwood  
22      and getting to the defense as soon as possible so they can  
23      conduct an additional review. So I think in terms of what  
24      needs to be reviewed for the defense to adequately prepare for  
25      trial and/or continuing negotiations with the government, these

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1 materials would need to be reviewed and that make take some  
2 time.

3 In terms of motions my thought is the additional  
4 applications that I intend to present to them since they are of  
5 the same type and nature, I don't think it necessarily has much  
6 of an impact of what, if any, motions need to be made.

7 The last thing I wanted to bring up would be cell  
8 phone contents. We got search warrants for various locations  
9 that included the ability to search cell phones. We  
10 additionally sought permission for a new warrant on various  
11 phones that were seized. We have the contents of those cell  
12 phones now. They have been analyzed and dumped. What I would  
13 propose producing to defense in the first instance, or at least  
14 making available, would be the analytic reports rather than the  
15 full contents at least for distribution because in many cases  
16 these cell phones or lap tops or other electronic media that  
17 have been searched contain inappropriate materials, videos,  
18 photographs, etc. We certainly would be willing to make  
19 available for inspection whatever the defense would want to  
20 look at; but in terms of disseminating it and in terms of  
21 getting it to the defendants so they can review it, those  
22 reports contain a lot of information and that is probably in my  
23 view I would suggest the best way to go about that.

24 We would anticipate lastly in the not too distant  
25 future applying for additional search warrants to search phones

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1 that were obtained during the arrests. Those phones have been  
2 in the continuous possession and custody and control of law  
3 enforcement and we've been focusing on discovery and getting  
4 the materials together. Certainly those phones are vouchered.  
5 Defense has been able and can inspect them at any time. I  
6 wanted to flag that issue. We would anticipate producing that  
7 in the same manner. That is, making available whatever  
8 analytic reports are prepared once we obtain permission to  
9 search those particular phones that weren't covered by a  
10 previous premise warrants.

11 THE COURT: Thank you. So when will this production  
12 of discovery be complete?

13 MR. MASIMORE: Right now I believe as of yesterday I  
14 am in possession of this full amount. I would estimate that it  
15 would take the remainder of this week and two additional weeks  
16 to prepare that in a manner to get it out, including I think  
17 Bates stamping telephone subpoena returns. I don't anticipate  
18 it taking longer than that. Again, some of it I can make  
19 available very quickly. Like GPS data, there is really no way  
20 to Bates stamp that. There are portions that I can make  
21 available quicker; but as I understand it, and certainly I am  
22 open to suggestion, I think the defendants want it all at one  
23 time because it makes it easier.

24 THE COURT: Let me hear from Ms. Greenwood.

25 MS. GREENWOOD: Your Honor, everything that the

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1 government has briefed today has been distributed to counsel  
2 with the exception of getting to me a hard drive and I  
3 coordinated with him and expect to get that within the week.

4 The last production was quite voluminous as was  
5 discussed at the last conference. It took quite a bit of time  
6 for the data to transfer to all the drives for counsel. They  
7 were distributed in the first and second weeks in May. I  
8 wanted to make clear that though the production was produced in  
9 April, mid-April, counsel has only had a couple weeks to review  
10 the materials.

11 As far as any outstanding issues, one issue that I  
12 have learned of in the last day or two is with client review of  
13 the facilities. Apparently the clients are now allowed only  
14 two hours or so at both the MCC and MDC to review the hard  
15 drives that have been provided to the facilities. I discussed  
16 this with AUSA Masimore this morning. Our plan is for me to  
17 call the facilities and request additional time and see how  
18 that works. And if that doesn't resolve the issue, then I will  
19 contact his office and see if they can intervene. Unless the  
20 Court has another suggestion, I think that might be the best.

21 MR. STAMPUR: It's two hours a week.

22 MS. GREENWOOD: I am actually a little unclear about  
23 exactly how much time clients are currently allowed. Two hours  
24 a week counsel is telling me now. I thought it was two hours a  
25 day. So obviously we need to resolve the issue of not enough



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1 time for clients to review the voluminous materials on the hard  
2 drives. I think we have a plan to begin to address that.

3 Beyond that as AUSA Masimore just mentioned, I think  
4 it makes sense to have the government provide Bates stamps on  
5 materials as much as possible to help with the rather  
6 tremendous volume of materials. My office of course will  
7 process anything that comes in on a rolling basis. Other than  
8 that, I don't have too much else to address with the Court  
9 today.

10 THE COURT: Thank you. So these materials that have  
11 been produced are available at the MCC and MDC for the  
12 defendants to review them.

13 MS. GREENWOOD: Yes, your Honor.

14 THE COURT: There was some mention before the last  
15 time about some possible solutions to the issues at the  
16 facilities regarding iPods. What has happened with that?

17 THE DEFENDANT: Well regarding iPods, I have not  
18 approached the either facilities about providing iPods for  
19 audio. I have generally spoken with each of the facilities.  
20 They are not inclined to allow iPods generally on any case. I  
21 actually have not had the occasion in this district to provide  
22 iPods to any clients on any case that I have been appointed to.  
23 I have on other cases in other districts.

24 MR. MASIMORE: Your Honor, if I may. Just on the iPod  
25 issue, I have a case I think is still some pending before Judge

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1 Cote with 49 defendants and massive discovery. iPods were made  
2 available. I can speak with defense about perhaps a way to do  
3 this. We've done it in the past and we may be able to do  
4 something like this. It wouldn't be conducive to reviewing  
5 historical cell sites or GPS, but to the extent there was a  
6 wire tap in this case with some audio and video.

7 THE COURT: Both facilities?

8 MR. MASIMORE: It was both MDC and MCC.

9 THE COURT: Thank you. Let me find out from the  
10 parties. I will hold off on any motions to sever based on the  
11 number of defendants here until we get closer to a trial date.  
12 Let me get a sense from the parties, if the parties can give me  
13 a sense, as to how long a trial would last in this case for the  
14 first set of defendants, whoever is in that first set.

15 MR. MASIMORE: Your Honor, I think breaking it up into  
16 two groups, I do think the government's presentation could  
17 probably be expected to last three weeks.

18 THE COURT: Does defense counsel have an estimate at  
19 this time?

20 MR. STAMPUR: I wouldn't venture a guess, Judge. I  
21 don't know if anyone else had a comment.

22 THE COURT: Let me get in terms of the most time that  
23 you think it might take for if there is a defense case.  
24 Obviously the defense has no burden to put on a case. Given  
25 the outer limits, what are we thinking at this time? Two

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1 weeks? Is an additional two weeks a fair estimate?

2 MR. STAMPUR: I think that would be a fair estimate.

3 THE COURT: Any other defense counsel have anything to  
4 add in that regard?

5 MR. GREENFIELD: No, your Honor.

6 THE COURT: So we all think this trial shouldn't take  
7 more than five weeks. Obviously things change, but at this  
8 point we think that a trial for the first set of these  
9 defendants shouldn't take more than five weeks; is that fair?

10 MR. LONDON: Yes.

11 MR. MASIMORE: I think sort of the way the government  
12 would anticipate it coming in, I think a lot of these records  
13 would probably come in through document custodians and we would  
14 ask for a lengthy period of time to make arguments based on a  
15 lot of this data and put in a summary. I think there are ways  
16 we can streamline it. I don't think it will take more than  
17 five weeks.

18 THE COURT: Again, I would like to perhaps try to get  
19 a trial date set today just because we have so many defendants  
20 and so many defense counsel so we can get some time blocked off  
21 here. I will hold off on any motions to sever until we get  
22 closer to a trial date. As I mentioned before the Second  
23 Circuit said I cannot try all 13 defendants at once. That is  
24 too many defendants to try at one time. It makes sense to  
25 break this into two group. Before we talk about potential

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1 trial dates, let me find out from the defendants if there are  
2 any issues regarding representations. That was something I  
3 wanted to raise. Again, before we set trial dates, I want to  
4 get a sense if there are applications for new counsel so we can  
5 deal with that.

6 Again, as I indicated to the defendants the last time,  
7 obviously if there are serious issues with you and your  
8 attorney, I want to hear that. But be aware that that may  
9 cause a delay in terms of trial and I know that it was  
10 expressed by many defendants they did not want that. Let me  
11 find out by a show of hands if there are any defendants who are  
12 requesting new counsel at this time, people sitting in the jury  
13 box?

14 I don't see any hands.

15 Individuals in the audience?

16 I don't see any hands either.

17 At this point it seems that the clients are at least  
18 generally satisfied with their counsel. Let me get a sense  
19 from counsel. Have counsel conferred about setting any  
20 potential trial date yet?

21 MR. MASIMORE: No, your Honor.

22 MR. STAMPUR: What haven't done that, your Honor, only  
23 because the government has informed us as to the massive amount  
24 of discovery that is forthcoming. It is still premature to do  
25 that. I just don't know when we are going to finish reviewing

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1 all this discovery. I have spent endless hours on the first  
2 batch of discovery and nowhere near going through that and  
3 Mr. Masimore has indicated there is another massive batch of  
4 discovery that is soon to be delivered. I just thought it was  
5 premature to do that.

6 MR. GREENFIELD: That being said, I agree with what  
7 Mr. Stampur said. We're missing two of the lawyers. So while  
8 we may among ourselves come up with a date, it may challenge  
9 their trial schedules. Maybe we're better off waiting until  
10 the next date, having everybody here, and at that point  
11 addressing the issue of respective trial date.

12 THE COURT: I don't think I want to do that because  
13 very well the next time we're here there may be counsel not  
14 here. When you have multiple defense counsel, you have defense  
15 counsel otherwise engaged in other trials or something else. I  
16 want to certainly give the defense and I will give the defense  
17 an adequate time of reviewing the discovery. I am not setting  
18 a trial date a month from now obviously since the discovery is  
19 not going to be totally turned over until at least three weeks  
20 and it may take a little bit longer than that -- I shouldn't  
21 say a little bit. It is going to take longer to make sure that  
22 the discovery is available to the defendants at the facilities  
23 and give counsel an opportunity to meaningfully review and  
24 discuss it with their clients. I would like to set a trial  
25 date so that we don't run into issues later in terms of the

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1 unavailability of counsel. Again, since it seems if in fact  
2 all 13 defendants are going to trial, we have to do this in two  
3 batches anyway. If the two attorneys who are not here cannot  
4 do it at that time, then they will be in the second batch I  
5 suppose.

6 So how is October the 6th? That is a date early in  
7 the fall. That should give everyone plenty of time to review  
8 discovery. How does October 6th work for counsel for the  
9 government?

10 MR. MASIMORE: That would be fine, your Honor.

11 THE COURT: Counsel for defense?

12 MR. STAMPUR: Well, actually it is bad for me. I have  
13 another case starting before Judge Stein. In addition, we  
14 haven't discussed reviewing the discovery and filing motions.  
15 I don't understand where the motions fit into that schedule. I  
16 am assuming that we'll get this discovery, right, and then  
17 we'll determine after we review it if it will take us more time  
18 than just the three weeks to file appropriate motions. Anyway,  
19 in response to that, I have an obligation November 10th so for  
20 me it is a problem.

21 THE COURT: The obligation is when?

22 MR. STAMPUR: November 10th.

23 MR. GREENFIELD: I have trial starting in early  
24 September, a case that will last into October.

25 THE COURT: The other counsel that are here is

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1 October 6. Does that work for the other counsel.

2 MR. LONDON: I am starting a trial before Judge Wood  
3 on September 29th. That will run into that date.

4 MS. BAGLIEBTER: October 6th will work for us.

5 MR. LONDON: I could be available later in October.  
6 Not the 6th because my trial is a week before and it could run  
7 two weeks, but a little later in October I can be available.

8 THE COURT: I think Mr. Stampur you indicated --

9 MR. STAMPUR: November 10th. I was going to suggest  
10 myself since I have a trial in early March if we can put my  
11 client into January that would be preferable for me.

12 MR. GREENFIELD: I would join in that because I have a  
13 September trial and I also have an August trial before Judge  
14 Ramos. So two back-to-back trials I would do. I really would  
15 like a January trial if I could have that.

16 THE COURT: Are the other counsel available in early  
17 January as well?

18 MS. BAGLIEBTER: We're available in January.

19 MR. LONDON: I have a trial before Judge Sweet in  
20 January. I don't know if it is going to go. It is  
21 January 14th. Whether my client is going to go to trial is too  
22 early to tell. He set the trial date sometime ago for  
23 January 14.

24 THE COURT: Well, if we have three counsel who are  
25 here present who are all available in January, and again for

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1 today's status conference I have broken this up into two  
2 different batches, there very well should be counsel available  
3 in January as well. It may seem appropriate to set a January  
4 trial date.

5 Will counsel for the government be available in  
6 January?

7 MR. MASIMORE: Yes, your Honor.

8 THE COURT: Tara, do we have a date in January?

9 THE DEPUTY CLERK: First week, Monday, January 5th.

10 THE COURT: And do we have five weeks after that?

11 THE DEPUTY CLERK: I don't have my other calendar.

12 THE COURT: That's fine. Let's schedule the trial for  
13 January the 5th, 2015. Obviously we'll have some interim dates  
14 between now and then to make sure discovery is progressing.  
15 Let's check back in about two months. Let's get a date some  
16 time in July.

17 THE DEPUTY CLERK: July 17th.

18 THE COURT: That should be fine. Are counsel  
19 available on July 17th.

20 THE DEPUTY CLERK: It is already set, Judge, 11:00.

21 THE COURT: We'll come back Judge 17th at 11:00.

22 I want to make sure the defendants understand what is  
23 going on here. We're going to move on as expeditiously as we  
24 can. There is discovery that needs to be made available to and  
25 your lawyers. Your lawyers may wish to make some motions



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1 regarding some of the discovery, which will take some time to  
2 decide. We do have a trial date set for January 5th. We'll  
3 adjourn this until July 17th at 11:00.

4 As indicated early, I find this is a complex case due  
5 to the number of defendants and due to the voluminous nature of  
6 discovery in this case. I further find that it is in the  
7 interest of justice and interest of the defendants to exclude  
8 time under the Speedy Trial Act from today's date to July 17th  
9 so that counsel may review the voluminous discovery in this  
10 case since the voluminous discovery may be made available to  
11 the defendants so they can meaningfully review the discovery as  
12 well. Having said that, we're adjourned to July 17th.

13 Anything further from the government?

14 MR. MASIMORE: No, your Honor. Thank you.

15 THE COURT: Anything else from defense?

16 MR. STAMPUR: Just one thing, Judge. I know it has  
17 been discussed, and I don't want to be repetitious, but it  
18 seems to me we have made every effort to allow the defendants  
19 more time to review discovery. It is so voluminous two hours  
20 on one day a week is a real problem. I know Mr. Masimore will  
21 check into that with the MDC. I appreciate that.

22 THE COURT: I agree. We need to make sure that the  
23 defendants have a meaningful opportunity to review discovery in  
24 the facility. So let's have the parties work on that and let's  
25 discuss that again on July 17th. If the parties are not able

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1 to resolve this with the facilities, let me know how I may be  
2 of service.

3 MR. STAMPUR: Thank you, Judge.

4 THE COURT: Thank you. Have a good day.

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